



MARICOPA COUNTY, ARIZONA

Board of Adjustment

Minutes

January 12, 2017

CALL TO ORDER:

Vice Chairman Harris called meeting to order at 10:02 a.m.

ROLL CALL/

MEMBERS PRESENT:

Mr. Abe Harris, Vice Chairman
Mr. Craig Cardon
Mr. Greg Loper

MEMBERS ABSENT:

Ms. Wendy Riddell, Chairperson
Mr. Jason Morris

STAFF PRESENT:

Mr. Darren Gerard, Deputy Director - Planning
Mr. Matt Holm, Planning Supervisor
Ms. Rachel Applegate, Senior Planner
Mr. Glenn Bak, Planner
Mr. Eric Smith, Planner
Mr. Ray Banker, Planner
Ms. Rosalie Pinney, Recording Secretary

COUNTY AGENCIES:

Mr. Robert Swan, County Counsel

ANNOUNCEMENTS:

Vice Chairman Harris made all standard announcements.

APPROVAL OF MINUTES:

November 10, 2016

AGENDA ITEMS:

TU2016033, BA2016047, BA2016049, BA2016043, BA2016046,
BA2016048, TU2016036

CONSENT AGENDA

TU2016033

Applicant:

Location:

Zoning:

Requests:

Mladick II, LLC (Cont. from 12/15/16)

Richard Mladick

24445 W. Sunrise Dr. – Miller Rd. and 107th Sunrise Dr. in the Buckeye area.

Rural-43

Temporary Use Permit (TUP) to permit ongoing special/temporary events at a private park/private wildlife reservation (fishing lake) for a two year period

District 5

BA2016047

Applicant:

Rio Verde Church Sign

Community Church of the Verdes

District 2

Location: Within right-of-way at the northwest corner of Avenida Del Ray Rd. and Forest Rd. – in the Rio Verde area

Zoning: C-2

Requests: Variance to permit:

- 1) Offsite advertising/Directional Sign within the required sight visibility triangle (25' x 25') where structures above two feet in height are not allowed and;
- 2) Offsite advertising/Directional Sign within the required sight visibility triangle (25' x 25') where signs are not allowed

Mr. Bak presented the consent agenda and staff recommends approval.

BOARD ACTION: Member Loper moved to approve the consent agenda; TU2016033 with conditions 'a'-'p' with correction to condition 'd' and BA2016047 with conditions 'a'-'f'. Member Cardon second. Approved 3-0.

TU2016033 conditions;

- a) Use of the site shall comply with the site plan consisting of one (1) sheet, stamped TU2016033 and stamped received December 6, 2016, except as modified by any condition identified herein.
- b) Use of the site shall be in conformance with the supplemental questionnaire consisting of four (4) pages stamped TU2016033 and stamped received December 6, 2016, except as modified by any condition identified herein.
- c) This Temporary Use Permit is authorized for two (2) years and shall expire on **January 12, 2019**. The Temporary Use Permit approval letter must be visibly displayed at the front of the property at all times. Failure to meet this display requirement shall result in revocation of the Temporary Use Permit if a Zoning Citation is issued.
- d) Temporary Use Permit shall become effective upon approval and shall remain effective for two (2) from the date of approval or such time annexation by the City of Buckeye becomes effective.
- e) The property owner/s and their successors waive claim for diminution in value if the County takes action to rescind approval due to noncompliance with any condition.
- f) Approval of the Temporary Use is not an approval to construct. Prior to construction, development or use of the property, the applicant/owner shall obtain all necessary clearances and construction permits.
- g) All development and engineering design shall conform with the Drainage Regulation, Drainage Policies and Standards and current engineering policies, standards and best practices at the time of application for construction.
- h) Prior to zoning clearance approval, developer(s) and/or builder(s) shall establish emergency fire protection services, covering all real property contained within the project area during course of construction and shall obtain a 'will serve' letter substantiating coverage from the appropriate Fire District, Department or Company servicing the site.

- i) The Temporary Use Permit letter must be visibly displayed at the front of the property at all times. Failure to meet this display requirement shall result in revocation of the Temporary Use Permit if a Zoning Citation is issued.
- j) Structures erected pursuant to an approved Temporary Use Permit shall not require a building permit if standing for a period not to exceed 96 contiguous hours. The responsible party shall provide the Affidavit of Structures for Temporary Events documentation, as specified in the Temporary Use Permit that said structures were erected and maintained subject to all applicable building safety codes and manufacturer's specifications. The documentation shall be provided to the Department within two working days following end of the special event to be filed with the Temporary Use Permit. Failure to provide the required documents will render the Temporary Use Permit null and void and constitute a zoning violation in accordance with Chapter 15 of the Maricopa County Zoning Ordinance.
- k) The Temporary Use must be removed at the end of the approved time period. All temporary structures must be removed, and the site returned to its original condition or better upon completion of each event. No structures shall be erected more than 72 hours before the start of the event from which this permit is issued. All structures shall be removed within 72 hours following the end of the event for which this permit is issued.
- l) Prior to any event, food concessions shall be permitted by Maricopa County Environmental Services Department (MCESD).
- m) Alcohol is not permitted on site unless a Liquor License is obtained through the Clerk of the Board.
- n) The applicant or property owner/s will be responsible for contacting their applicable emergency and fire protection agency for medical/emergency services and fire protection.
- o) The Temporary Event or Special Event shall adhere to the Board of Supervisors Resolution, December 1980 as applicable which establishes guidelines and conditions for temporary uses. The following conditions shall apply:
 - 1. At least one patrolman or security guard for every 500 persons in attendance.
 - 2. The applicant shall provide adequate ingress and egress to the premises and parking areas. Traffic guards shall be employed to insure orderly traffic movement and relieve traffic congestion onto public rights-of-way.
 - 3. The applicant shall provide an ample supply of water for drinking and sanitation purposes. The quality and quantity of water and location of facilities shall be approved by the Maricopa County Environmental Services Department.
 - 4. The applicant shall provide an ample supply of water for drinking and sanitation purposes. The quality and quantity of water and location of facilities shall be approved by the Maricopa County Environmental Services Department.

5. Supplemental toilet facilities must be provided for every special event. At least one closed toilet facility marked MEN and at least one closed toilet marked WOMEN shall be provided. A toilet for each 40 males and for each 40 females expected to attend the event may be required; the number and location of toilets shall be approved by the Maricopa County Environmental Services Department.
6. At least one trash can with 32 gallons capacity for every 25 persons expected to be in attendance shall be provided. Trash and refuse disposal shall be pursuant to procedures established by the Maricopa County Environmental Services Department.
7. Temporary uses conducted after dark shall provide lighting to insure public areas are adequately illuminated. All outdoor lighting shall be shielded so that it is directed downward below the horizontal plane of the fixture and does not trespass onto adjacent properties.
8. Temporary Use Permit has been approved to include overnight use, the applicant is required to provide overnight camping facilities and overnight areas as identified on the site plan. Any overnight use shall be approved by Maricopa County Environmental Services Department.

p) The following Planning Engineering conditions shall apply:

1. According to the effective FIRM panel number 04013C2580L, dated 10/16/2013, the entire property is designated under Zone AE (floodplain & floodway) one percent annual change (100-year) special flood hazard areas (SFHA). Any development on this property must obtain a Floodplain Use Permit from Maricopa County.
2. Any development in the floodway must be reviewed to determine if the project will increase flood heights. An engineering analysis must be conducted before a permit can be issued. A record of the results of this analysis shall be part of the permit file, which can be in the form of a No-rise Certification.
3. There shall be **no grading associated to this Temporary Use**. Engineered Grading and Drainage plans must be provided for all grading within this project and required permits shall be secured.
4. Any work on the existing buildings, identified as "A" on the submitted exhibit, will require a permit. Improvements, modifications, additions, reconstruction or repairs that reach a fifty percent (50%) substantial improvement threshold based on the valuation of the structure, require that the entire building be brought into compliance with all Flood Control & Drainage regulations.
5. The portable restroom trailer, as identified on the submitted exhibit, shall be fully licensed and ready for highway use at all times. "Ready for highway use" shall be defined as the trailer being on wheels or a jacking system, being attached

to the site only by quick disconnect type utilities/security devices, and having no permanent attached additions.

6. The proposed temporary caretaker facility, as identified on the submitted exhibit and described in the revised narrative as recreational vehicle (RV), shall meet the following requirements: the RV shall be on-site for fewer than 180 consecutive days at a time, and shall be fully licensed and ready for highway use at all times. "Ready for highway use" shall be defined as the trailer being on wheels or a jacking system, being attached to the site only by quick disconnect type utilities/security devices, and having no permanent attached additions. Otherwise, a Floodplain Use Permit will be required to show that the RV meets the elevation and anchoring requirements for mobile/manufactured homes as described in the *Floodplain Regulations for Maricopa County*.
7. Due to the floodway and floodplain on the property, it is recommended to file an evacuation plan with the Maricopa County Department of Emergency Management and any other responding jurisdictions. The plan should indicate escape routes and alternate vehicular access in case of a flooding event.
8. A future right-of-way (ROW) reduction request has been submitted and reviewed. Please see the attached letter for details.

BA2016047 conditions;

- a) General compliance with the site plan stamped received November 15, 2016.
- b) Failure to complete necessary construction within one year from the date of approval, shall negate the Board's approval.
- c) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.
- d) A temporary fence waiver must be obtained to allow for the sign placement and protect future required clearances (such as safety sight visibility triangles) once additional lanes are built.
- e) If public improvements necessitate in the above-mentioned intersection, the Rio Verde Community Church shall, at that time, be responsible for removal or relocation of the sign and/or related components at no cost to Maricopa County.
- f) Approval of the variance expires in such an event MCDOT road improvements necessitate removal of the sign.

REGULAR AGENDA

BA2016049

Applicant:

Location:

Agriculture Exemption Interpretation

Bart M. Shea

Assessor's Parcel Numbers 219-16-111 & 112A in the Goldfield Ranch area

District 2

BOARD OF ADJUSTMENT MINUTES

Meeting of January 12, 2017

Page 5 of 20

Zoning:
Request:

Rural-70
Interpretation of an administrative determination for an Agriculture Exemption (training, breeding operation for equine and cattle; ref. #LU20160047)

Mr. Holm presented BA2016049 and gave some background on the case. On June 28, 2016 the Planning and Development Department (P&DD) received an application for an Agriculture Exemption covering approximately 91 acres located in the Goldfield Ranch area. Included with this application was a Request for Real Property Classification Verification form from the Maricopa County Assessor's Office (MCAO) identifying the subject parcels as equine operation relocation. This form, which is required to be submitted with Agriculture Exemption Land Use applications, was approved by the MCAO on June 22, 2016. Given the 'Agriculture' status approval by the MCAO and compliance with the land use application requirements, on August 3, 2016 the P&DD approved LU20160047 subject to compliance with the applicable site plan and statutory requirements. On December 19, 2016 the P&DD received an application from Mr. Bart M. Shea requesting Board of Adjustment interpretation of the approved agriculture exemption. Specifically, Mr. Shea is asking the Board of Adjustment to consider the following:

1. Whether P&DD staff has the authority to "grant full exemption with extended rights without consulting the Board of Adjustment on each case."
2. Whether P&DD staff has the authority to "exempt all ancillary uses on the property that are not directly involved with the agriculture exemption."
3. Whether P&DD staff has the authority to "grant this exemption inside a subdivision without procedure of a special use permit and create a reverse condemnation of adjoining property without due process."

Mr. Holm noted the applicant may be requesting additional interpretations, but the application that was submitted in the packet had some missing information. In response to the applicant's position, Arizona Revised Statutes do not require P&DD staff nor the Assessor's office to consult with the Board of Adjustment in granting an agriculture exemption. Arizona Revised Statutes do not require Board of Adjustment approval of requests for land use exemptions, including agriculture exemptions. Arizona Revised Statutes specifically exempt from the zoning ordinance any land and improvements devoted to commercial breeding, raising, or training equine. At this point in the process staff believes that all uses and improvements on the property are related to the equine operation and, therefore, are exempt from zoning ordinance requirements. It is up to the property owner to demonstrate to Maricopa County that all structures are related to the exempted use, and that such structures are exempt from zoning and building permit requirements. Again, to this point in the process staff is satisfied that the existing uses and structures are related to the agriculture exemption. Arizona Revised Statutes do not preclude approval of any exemptions, including agriculture exemptions, within subdivisions. Arizona Revised Statutes do not require Board of Supervisors approval of a special use permit related to a use that is already exempt from the zoning ordinance. The subject property is not located within a statutorily-defined subdivision so this assertion is non-germane to the issue. The applicant asserts that this agriculture exemption results in a reverse condemnation on adjoining properties without due process. We assume the applicant is actually referring to an inverse condemnation, but regardless staff does not believe that such a condition exists since the agriculture exemption has no bearing on the property rights of the applicant's property. Decisions concerning inverse condemnations and due process violations are not within the purview of the Board of Adjustment; that purview falls to the court system. Staff accepts the

representations made by the applicant to the MCAO and P&DD to be a true and correct reflection of the proposed activities, and issues a determination of agricultural exemption based upon that information. If the activities are later found to exceed those identified in the application, a determination would be made whether those activities were outside the scope of what is permitted under the agricultural exemption. If the activities were found to be outside that scope, the property owner would likely be in violation of the zoning ordinance and staff would proceed with corrective action enforcement accordingly. Staff recommends denial of BA2016049.

Mr. Bart Shea, the applicant noted he will let his attorney give the legal presentation of his appeal and will answer any questions afterwards.

Mr. David Lund, attorney for the applicant said on July 8, 2016 Maricopa County Planning Department administratively granted the Wilms family an application for agricultural exemption. The administrative approval was impermissible, it was a change in zoning. The parcel encompasses 90 acres within the preserve of Goldfield Ranch in the Rural 70 zoning district. Before we can determine if this was impermissible change in zoning, we need to consider the zoning before the exemption was made. The zoning of the property was Rural 70, the use regulations are the same as those in the Rural 190 zoning district. The permissible uses in Rural 190 zoning ordinance talks about public equestrian uses – boarding up to five horses not owned by the property owner, all structures must meet the setback requirements, and any conditions that cannot meet these specifications require a Special Use Permit (SUP). With the exemption, the unrestricted use of the property is subject to other regulatory agencies such as flood control and environmental services. A change in use is a change in zoning and if you are going to use under the regular zoning ordinances you have to get a SUP because you are changing the uses permitted under the zoning application. Instead of seeking a SUP the Wilms applied for an agricultural exemption through an administrative process. The agricultural exemption changed the zoning R-70 to exempt and you have a change in use, it's a change in zoning. When you look at Maricopa County ordinance section 305.1 it talks about the application process for a zoning change it states adjacent landowners must be given notice, and there must be a public hearing and an opportunity to be heard, and none of that occurred. It was all done over the counter and they got a stamp of approval. This was an impermissible way to change zoning. If you look at the Arizona Revised Statutes section 11.814 talks about rezoning, conditional zoning, notices, hearing and citizen review. It goes through the same process where there should be notice given, an opportunity to be heard, and hearing by the commission and it to be approved. The proper process would be the Board to hear this before the exemption was granted because they are changing a use of property and by definition it is a change in zoning. The property falls in the Goldfield area plan, it is regulated by subdivision and Goldfield exempt properties. According to the Goldfield plan that manages this whole district, it is adjacent to state property and talks about the uses of the preserve and describes the uses. Maricopa County went through the process through the Goldfield area on what are the permitted uses. When you change and modify the uses you have to go through the appropriate processes to do so. How could an administrative change happen without the consideration of the Board's approval? When the Wilms did their administrative process it also made these bank owned properties become exempt. The ramifications of the application are far more beyond the scope of the application. The structure they built is a massive structure, and there is a pad and a septic tank underneath which is a flood protection designation, and all these structures are being built in a flood zone. They are here to make sure all the structures are properly permitted, and there has been no

permitting done. Strong facts show this is going to be a commercial operation and they would need to seek a SUP in order to do that.

Mr. Swan, County Attorney gave the Board legal advice and stated the Planning and Development Department (P&DD) followed the state statute which originally goes to the County Assessor to determine if a property is classifiable under several types of classifications by virtue of its use, which makes it exempt from regulation under the normal process. Agricultural activities is one of those areas. The state says if you fall within this classification, the normal progression of regulatory procedures do not apply to that property. The County Assessor makes the initial determination which is binding upon the P&DD unless it finds special circumstances which are very limited. The P&DD made their determination that there was no divergence. The use is being made agricultural in nature, by definition under state statute, which includes specifically raising, boarding, breeding, and training equine. The Board needs to look at whether there is a clear exemption from state regulatory and county regulatory processes. If you feel somehow the Planning Department erred and there is some sort of egregious exception by virtue, the usage of the property that is declared exempt until otherwise determined. It is up to the Board to determine which path to follow. You don't have to get into the minutiae of the zoning ordinance, as your advisor, the state says you will not involve yourself in making determinations if the property meets this criteria. The County Assessor thought it met that criteria, Planning and Zoning thought it met that criteria, I think it meets that criteria. You only get into the position that Mr. Lund has been outlining for you if you are not sure that the total exemption for agricultural purposes apply to this property.

Mr. Lund said when you look at the exemption you read the statutory scheme together and 11.814 says there will be a change in classification, but you still have to go through this process to get the exemption. Once you get approved and if what he said is true, why is there an application process at all. There is an application process because there is supposed to be a hearing.

Mr. Gerard stated the application is a land use tracking mechanism. It is for customer service to track where development has occurred and if it is exempted through mining or agricultural or other exempted uses. When the Assessor gives a certain agricultural status that property is agriculturally exempt. The PD&D does take a look to make sure that a component is not subject to the exemption. The argument is that the property must be rezoned by the County in order to be statutorily exempted from the county zoning authority. This does not make sense, it has not been historic practice for decades and most agricultural exemptions are in the rural zoning districts throughout our jurisdiction.

Mr. Shea said Joy Rich is the author of the memo dictated, certain uses allowed under the exemption and other uses would not. Arenas are not allowed under the 2012 directive without having a building permit and going through the process. In this particular instance they add more rights like riding lessons and caretakers houses and living quarters, whatever else deemed agricultural. It's an all-encompassing interpretation, prior to this it was clearly defined and stipulated that these were agricultural exemptions and these are not agricultural exemptions. Now we've gone further and said everything is an agricultural exemption. At no point in every other county is there a commercial operation inside a subdivision without going through a special use permit or going through a conditional use permit, it would be under some type of guidelines.

Ms. Lindsay Schube speaking on behalf of the property owners noted they have a legally approved agricultural exemption from both the Assessor and the Planning and Development Department. They are not a party to this case, the client wasn't noticed nor was the property posted, but she is here to participate in the process. Mr. Shea has no standing to bring the appeal. If you look at the state statutes the definition of what agricultural property is, it is well defined, the application process is well defined and the appeal process is well defined. If you look at 4212.155 the assessor shall notify the property owner as if they will be approved or denied. The property owner may appeal the decision of the Assessor. There is no mention of the appeal rights of the adjacent property owners. With the statutory interpretation you look at the pure language and so the appeal process is well determined and does not give any rights to the adjacent property owners. There is also timeliness issues, this agricultural exemption was given on July 8 by Planning and Development and the Assessor's approval was in June. There is also vesting rights and property rights in the state of Arizona and when the property owner was given their agricultural exemption they moved forward with the development of their property in reliance of the agricultural exemption and in accordance with the site plan on file with Planning and Development. There is no standing in having this hearing, it wasn't timely and their rights are vested. If you look at the statutory framework and look at the Maricopa County ordinance, agricultural exemption cases do not come to the Board of Adjustment and they have no authority. Planning and Development has met with the applicant and they looked at it further to know the intentions of the use of the property that fit in the agricultural exemption status. An agricultural exemption is an ancillary use to the agricultural status that the client has been given, and the County is satisfied with it, and that means there is no regulation. Strongly request the Board deny the appeal and to uphold the administrative decision of the staff.

Vice Chairman Harris asked Ms. Schube about the statement she made about the Board being asked to do something they do not have the authority to do. Ms. Schube stated she does not think it's a question for Board of Adjustment whether the agricultural exemption was properly granted. It is a statutory question; the Assessor looks at the statutory framework when they grant the agricultural exemption. When you come forward to the Planning and Development Department with an application for exemption it is so the staff knows what is happening out there and to make sure they are operating in the legal confines of the agricultural exemption. It's not open ended, and you have to work within the confines of a statute, but it is not something the Board has the authority to interpret.

Member Loper asked if it is coming to the Board because of the interpretation, and isn't there an appeal period, four to five months has lapsed. Mr. Gerard said this was viewed by County management under the umbrella of interpreting the ordinance. It is well beyond 60 days from when we had interaction with the appellant and the decision was made that the original contact was made part of the appeal. We are tardy in getting this to this body.

Member Cardon said what he understood from Mr. Swan's statements there is specific relief request from the applicant, and understands we do not have the authority to grant the relief request. What would the recourse be to the applicant? Mr. Swan said the state statute says the Assessor will make the initial determination as to whether it falls into one of the exempt categories. The Planning and Development Department is bound by that determination with a limited exception unless the Planning and Development director independently determines that all or part of the property is not used primarily for one or more purposes enumerated. If any portion is not used for agricultural purposes, and in this case equine related activities. The Assessor is empowered to make the initial determination, they look at specific activities ongoing or planned

for the property and to speak up if it's not really entitled to that classification under the agricultural exemption. Member Cardon asked if their consideration is whether or not the Assessor had the authority. Mr. Swan said no, to look at what the Planning and Development did with the very narrow exception and if the department had any discrepancy in the current or planned operations.

Mr. Randy Haines, resident of Goldfield Ranch asked the Board to deny the appeal. The Planning and Development staff acted exactly as the ordinance requires them to do. Staff granted the exemption exactly as Arizona's statutes require and did not make any conclusions or interpretations or grant any extended rights nor did the Wilms ask for any. It is a commercial equine breeding and training facility that will generate some neighborhood traffic, but less traffic than what would be generated if the 16 homes were built on this same property. The statute specifically requires this to be agriculturally exempt, an equine breeding and training operation must be commercial and generate a profit. People who breed, board and train horses for their own pleasure or hobby like Mr. Shea, they would not qualify for an agricultural exemption because they are not commercial. Mr. Shea's only real objections are with the Arizona agricultural exemption statute itself not with any conclusions, actions or interpretations by Planning and Development staff. Mr. Shea would have to get the statute changed to have any recourse to require zoning for an equine breeding and training operation.

Ms. Kathy Haines, resident of Goldfield Ranch said in response to a statement earlier, the Wilms do have a dust permit which was obtained last January. They keep a water truck on the property and are regularly inspected. The planning staff did its job and did it right. Despite the cut fences and stolen vehicle batteries, the Wilms equine training facility is nearly completed as planned in the agricultural exemption application. Ten years ago Goldfield Ranch updated the land use plan. The land use plan states that limited equine business is compatible with the equestrian character of the planning area and to be accepted in the area. The location of the Shea and Wilms property are outside of Highway 87 with 11 homes, six of which are equine facilities. The Wilms agricultural exemption is compatible with the area and asks the Board to deny the appeal.

Scott Campbell, resident of Goldfield Ranch said he talked to Paul McNeil with County Code Enforcement. He helped us understand what an agricultural exemption was. Also had numerous emails exchanged with Jennifer Pokorski the Ombudsman, an impartial representative for all members of Maricopa County. They both referred back to directive 2012-1 which is how the department interprets an agricultural exemption. Why a special use permit is not required for the Wilms' equestrian operation, and how is the large barn exempt from zoning, and why are there no permits required for the residence being built on the property. The County said under the directive, the agricultural exemption falls under four uses. The first two are not equestrian, but the third one is limited operations, rodeos and other equestrian operations may be permitted with a special use permit. This is clearly not a limited operation, they will be providing riding lessons. According to Article 501.2.21.e riding lessons that are not in conjunction with the boarding of horses are not considered an accessory use. If you go to the Wilms website they provide their own horses to provide these riding lessons so that doesn't apply. They are a public riding lesson business and Article 1301.1.20 states public riding stables may be permitted with an SUP. It clearly shows on their website they provide horseback riding lessons and are open to the public. According to the directive they clearly would require a SUP. They are moving this facility to Goldfield Ranch. These people are being allowed to build a very large structure that's going to hold public riding lessons to have spectators in it and there is no County oversight whatsoever. We don't know if they are building it properly or if it will be safe. It is going to be open to the

public, and have normal operating hours, and spectators are invited to stay and watch. One of the definitions of an event is to have 25 or more people. With a facility this large with operators, students and spectators how is it not going to exceed 25 people on a consistent basis?

Mr. Gerard stated the agricultural exemptions under municipalities have a different statutory exemption than unincorporated areas. He noted he is an author of directive 2012-1 and also the author of most of the regulatory reform text amendments that have been mentioned here today. All uses on property designated agricultural by the Assessor will be given PND agricultural exemption, except that the PND director has to determine certain types of equestrian related uses are not agricultural, which include arenas and other structures for public assembly events, mounted cowboy shooting, riding lessons not in conjunction of the boarding of horses, and horse rentals staging for offsite trails rides, those would trigger a special use permit. We did have conversations with the Wilms legal counsel and they do understand this. There is no use occurring on the property that is in conflict with their approved agricultural exemption.

Mr. Campbell asked how the use can take place when the construction is not complete and how can they build a single family residence on the property, is the property exempt? He noted his answer from Ms. Pokorski was this was not their primary residence. He also said the Wilms have stated the house is not going to be their primary residence and that they live at another location. The Wilms filed a harassment case against the Shea's and it was heard and was dismissed. During the hearing, Ms. Wilms was asked why did she buy the 92 acres, and she said we had a developer buy our ranch in Scottsdale, we wanted to move out of town, have something larger and will be moving our family and business. Are the Wilms being honest with the County? The County believes they are not moving out there. Her sworn testimony is they are moving out there.

Vice Chairman Harris noted they need to revisit some things with the County attorney and staff, so they will not take any action at this time and will not approve or deny and will be looking at a continuance.

Mr. Campbell said when he spoke with the department about the agricultural exemption and they said, "With much entitlement comes with much responsibility." They have been given this entitlement and they are being trusted to live up to the letter of the law. They've been misleading if they will live there and also in their site plan. They show the barn just outside of a flood plain and after they got their land use exemption they rotated the barn and put it in the flood plain.

Ms. Cheryl Shea stated on May 4 her life changed forever, that's when bulldozers came and cut miles of road, we had no idea what was going on and had no notification. On September 3 we happened to notice a sign on their gate and it showed a site plan. When we bought our property seventeen years ago we relied on hard zoning of the property. The preserve was to only have 13 houses along ridges, it wasn't going to have commercial property. The County said they weren't going to change the zoning but of course they have, this is no longer a residence next to me it is a business. The County said they didn't change the land use, but of course they have it is no longer a residential site. Our family moved here first, when we signed our papers back in 2000 we had certainty of rights to the hard zoning that was clearly designated in zoning maps, county assessor reports and title reports, the County took that away from us. The County misinformed the Wilms of their rights and they never informed us of our rights. If you polled all of the residence of Phase 5 Goldfield Ranch, not one would be in favor of commercial development in our community and most of us are opposed. We will continue to be vocal about this opposition until

someone revokes the land use permit and makes them accountable for an open citizen's review process and that appropriate permits be obtained and followed.

Ms. Cindy Carlier, resident of Goldfield Ranch said they thought when they purchased land in Goldfield Ranch it was strictly for residential use. Never did we think a structure of this size would be constructed in a wash backing a national forest. When our guests visit, they would say what beautiful views you have and now they say what the heck is that. The size of the structure is unreasonable, unwarranted, and unlawful use of ones property in a manner that interferes with the enjoyment of others. This is nothing personal against the Wilms, they were misinformed.

Vice Chairman Harris stated he understands that tempers run high in these types of situations, but does not think by continuing the conversation today will get us to where we need to be. We need to have some more information.

Mr. Gerard stated from his standpoint staff recommendation is to uphold the staff interpretation and deny the appeal. We do have someone to speak on the flood control issue.

Vice Chairman Harris noted Mr. Swan said there is some information that he was not privy to. We would like to be completely informed with all the information before we make a motion.

Mr. Lund noted, Mr. Swan said the Assessor makes the initial interpretation and the planning department makes the final determination. We do not oppose a continuance of this hearing.

Vice Chairman Harris closed the hearing to the public.

Ms. Jennifer Pokorski the Ombudsman said she does not report to an agency, she reports to the Deputy County Manager. When an issue like this comes up I collect information from all the different agencies. The flood control regulations and the environmental health code is not part of the exemption that is granted. There is a separate investigation at flood control and there is a requirement for a septic permit that is separate from whatever decision is made.

Vice Chairman Harris is concerned about why the Wilms do not have a special use permit. Mr. Gerard said in discussion with the Wilms and their legal counsel, if they hold a public assembly event at the site it would become a violation, if they have riding lessons that are not associated with the boarding or training of equine that is a zoning violation outside the parameters of their approved agricultural exemption. It is understood some of the activity occurring at their site in Scottsdale cannot occur at this site unless different zoning entitlement is obtained like a special use permit.

Vice Chairman Harris would like to entertain a motion.

Member Loper stated he grew up in northern Arizona, worked in other counties in northern Arizona, and has driven by this area thousands of times and it is beautiful. In regards to our decision, you still have to be neighbors and hopes there is a way to work things out and find some common ground. With my experience with other counties, this is not unique to Maricopa County and it really gets down to the agricultural exemption which is a statutory mechanism and the County is the messenger of what the legislator is trying to say. It outlines what it tells the County and the City how it is implemented. The real change needs to come at a statutory level, until then the Assessor's hands are somewhat tied with an appeal process outside this body and

the County Planning Department are somewhat tied as well. Prior to the last conversation with Mr. Swan, I was ready to uphold staff's determination on this. It is good that the County Attorney, the Planning Department are on the same page and what's been presented today they will want to look at. Would like Mr. Gerard to enumerate what those uses are, and that will kick them into the land use so that everybody is clear. Recommending continuance to the next scheduled Board of Adjustment hearing.

BOARD ACTION: Member Loper motioned to continue BA2016049 to February 9, 2017. Member Cardon second. Continued 3-0.

BA2016043	Cohen Property (Cont. from 12/15/16)	District 1
Applicant:	Tiffany and Bosco	
Location:	805 N. Scottsdale Road – Scottsdale Road and Loop 202 in the north Tempe area	
Zoning:	IND-2 PD	
Request:	Variance to permit: 1) Parking within the required sight visibility triangles where parking is not permitted	

Mr. Bak presented BA2016043.

Mr. Shaine Alleman representing Elite Jewelry & Loan said the variance is to allow parking spaces within the sight visibility triangle and they are currently sitting on a legal non-conforming use. The property owner purchased the property a couple years ago and began extensive refurbishments to the building and opened eight months ago. The customer parking has been a safety issue, when backing out you back out into the street and if not into the street they have to do a three-point turn to get out of the space. This is happening due to the 20 foot back out area, when 24 feet is required. Peculiar conditions exist and it imposes a hardship to the property owner. Scottsdale Road has been widened over the past decade, and currently they are in violation of two codes 1102.7.3 and 1102.7.4, where you cannot design a parking space that backs out over a sidewalk or into a street, and when you leave a space it should be designed to leave in a forward motion. The hardship is a substandard parking space which is an extreme hardship on the property owner. It creates unsafe parking for the customers where the property owner is constantly monitoring to make sure the customers are safe. The approved site plan has five parking spaces that face the building, with a 20 foot parking maneuver area. The parking spaces and the Americans with Disabilities Act (ADA) isle are sitting on the sight visibility triangle with a legal non-conforming use that exists now. The original site plan submitted with the variance application, the parking spaces are turned away from the building and line up along the north and south property line and it created a 26 foot back out maneuvering area which is in compliance. With the comments from staff, he took it back to the property owner to address the concerns and revised the variance site plan. The two parking spaces on the north have been removed which now creates a 15-1/2 foot access way and took out one parking space on the south. Now they have maneuvering area for cars coming in and out, less intrusive, does not cut off access, and it is a much safer business environment for the property owner.

Vice Chairman Harris asked about the property to the north. Mr. Alleman said there was a concern that they would be cutting off access to the right-of-way to Scottsdale Road by having

parking spaces on the north, but they alleviated it by taking away two spaces and have a 15 feet ingress egress access on the north.

Member Loper asked if there is a driveway on Scottsdale Road from the business to the north. Mr. Alleman said there is not, and there's no issue backing out onto Scottsdale Road. There is no parking conflicts with the neighbors, since their business hours are completely different. It meets all required tests for a variance, improves safety for customers, City of Tempe has no opposition, and a letter from the property owner to the north attesting the new changes.

Member Loper asked if they looked into the non-conforming use aspect and if the variance was the only option. Mr. Gerard said there is legal non-conforming conditions but are not illegal. We would not permit a brand new development with a 20 foot back up space, so what's out there now is legal non-conforming. You have to consider if the existing non-conforming condition is more of a public safety concern than the proposed non-conforming condition.

Member Cardon noted it was a good presentation and it helped to understand what was being presented. The proposed use appears to be safer with Mr. Gerard recognizing the non-conforming use. There is a peculiar condition with the widening of Scottsdale Road and with the current configuration with only 20 feet to back out.

BOARD ACTION: Member Cardon moved to approve BA2016043 with conditions 'a'-'c'. Member Loper second. Approved 3-0.

- a) General compliance with the site plan stamped received December 28, 2016.
- b) All required building permits for proposed development shall be applied for within 120 days of the hearing date unless otherwise directed by the Board. Failure to apply for any required building permits within the specified time, or to complete necessary construction within one year from the date of approval, shall negate the Board's approval.
- c) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

BA2016046

Applicant:

Location:

Zoning:

Request:

Treglia Property

Wolfgang Klein

12618 E. Via de Palmas – Chandler Heights & Cooper Rd. in the Chandler area

Rural-43

Variance to permit:

- 1) A proposed side setback of 27'-2.5" where 30' is the minimum permitted

District 1

Mr. Smith presented BA2016046, the request does not meet the statutory requirements for granting of the variance.

Mr. Wolfgang Klein, the applicant noted the proposal is actually incorrect in respect to the distance, his original application he asked for a 25 foot side yard setback. The owners want to

build an addition along with a garage. There are peculiar conditions on the property, it has a lot of vegetation with mulberry trees in the front and pecan trees on the west side with nothing on east side of the property. They are proposing to have the garage placed on the east side of the property, and the 35 foot setback would not fit, so they are asking for 25 feet. The property is very deep, 660 feet deep and 150 feet wide, with flood irrigation on the property. With those restrictions the side yard setback of 25 feet on the east side would be the best solution. There is no additional opportunity for a garage without taking out the mulberry trees, and believe the side yard setback on the east side is appropriate. The other option was to have a free standing building as an accessory structure away from the main structure, but it is more appropriate to have the garage attached to the building itself with a 25 foot side yard setback with a reduction of 5 feet with the 30 foot required.

Mr. Gerard noted if they wish to make a motion for approval they would need to state a revision to condition 'a' so that it reads to allow a minimum 25 foot east side setback.

Member Cardon asked if they have talked to the neighbor to the east. Mr. Klein said yes, it is a close community and they are aware and have no problem.

Member Cardon said there is a peculiar condition where the lot is narrow and he supports approval of the 25 foot request.

BOARD ACTION: Member Cardon approved BA2016046 subject to conditions 'a'-'d' with modification to condition 'a'. Member Loper second. Approved 3-0.

- a) General compliance with the site plan stamped received November 16, 2016, but to allow a minimum 25' east side setback.
- b) All required building permit for proposed development shall be applied for within 120 days of the hearing date unless otherwise directed by the Board. Failure to apply for any required building permit within the specified time, or to complete necessary construction within one year from the date of approval, shall negate the Board's approval.
- c) Failure to complete necessary construction within one year from the date of approval, shall negate the Board's approval.
- d) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

BA2016048

Applicant:

Location:

Zoning:

Request:

Holsonback Property

Michael and Margaret Holsonback

1637 S. 357th Ave. – 357th Ave. and Buckeye Ranch Rd. in the Tonopah area

Rural-43

Variance to permit:

- 1) A proposed front setback of 20' where 40' is the minimum permitted

District 4

Mr. Banker presented BA2016048, he noted in addition to the carport the property has several unpermitted structures and currently have building permits assigned at this time. The applicant has listed several arguments to support a peculiar condition and unnecessary hardship, including the owner's disabilities and the convenience of the location of the carport and the proximity of the existing house, and the inability to move the carport to meet the required setbacks due to the location of mature trees, water and electrical lines. Staff does not see a statutory reason for approving the existing location of the carport. The existing Recreational Vehicle (RV) shed cannot be approved for permits at the current location, as it is setback from the southwest property line by 15 feet. The plat shows 20 feet drainage easement for a typical lot layout along all property lines in the subdivision. It was confirmed by engineering that no structures can be located outside the building envelope. Staff does not see a hardship with these structures and there is room on the property to move them.

Mr. Michael Holsonback noted he and his wife are physically unable to do a lot. The reason they built the carport was the garage was supposed to be a three car garage, but the prior owner converted part of the garage into a storage area and it is now a one car garage. In order to have a place for both vehicles to be safe he had the carport installed and failed to get a permit. If the carport wasn't in the current place, it would be a hardship with a lot of walking from the gate to the RV shed which is too much walking. They didn't mean to cause any problems and they are trying to comply.

Member Loper stated he is inclined to support the variance request because switching the frontage addresses one issue and creates another. If the applicant has gone this far and put in a request, we should act on the request. Even switching the frontage will create a different variance request for the shed if they switch the frontages. If they approve it in its present configuration they still have to address the RV shed and asked staff if the applicant would need to come back before us. Mr. Gerard said he believes not, since they need zoning requirements. There would have to be a permit for the structure and it could be tagged to the current permit with a determination by drainage engineering management.

BOARD ACTION: Member Loper approved BA2016048 with conditions 'a'-'c'. Member Cardon second. Approved 3-0.

- a) General compliance with the site plan stamped received December 12, 2016.
- b) Failure to complete necessary construction within one year from the date of approval, shall negate the Board's approval.
- c) Satisfaction of all applicable Maricopa County Zoning Ordinance requirements, Drainage Regulations, and Building Safety codes.

TU2016036	Rentfro Property	District 3
Applicant:	Elizabeth Loomis	
Location:	45422 N. Zorillo Dr. – New River Rd. & Zorillo Dr. in the New River area	
Zoning:	Rural-43	
Request:	Temporary Use Permit (TUP) for Temporary Housing	

Mr. Smith presented TU2016036, and noted there were two oppositions filed but not verified.

Ms. Elizabeth Loomis, the applicant stated they applied for the Temporary Use Permit (TUP) so she could live on the property during construction working as the project manager, and also for the owner when she comes to visit as they are trying to build a house. The horses were brought in first and are currently on the property. She comes to the property twice a day to feed the animals and oversee the construction and it would make her life easier if she could stay on the property.

Member Loper asked how long has the RV been on the property. Ms. Loomis stated there is a toy hauler currently on the property and it is deemed as a construction trailer and to use the restroom. Member Loper asked if there is a septic tank on the property. Ms. Loomis said no, they take their waste off the property to dispose of it. Member Loper noted in August 2015 there was a permit issued for the single family home. Ms. Theresa Wilcox noted it is the same property it just went into a trust account. Member Loper asked if the RV has been on the property during this time. Ms. Wilcox said yes, they thought they would have everything done sooner but between their engineer and CAD designer and learning the permit processes it is taking quite a while.

Ms. Veda McFarland stated she lives south of the property, since 2012 there was nothing on the property north of them. When it was sold to Margaret Rentfro they were told a nice house was to be built on the property, but the property has steadily degraded. There is no Homeowner's Association (HOA), but according to the Covenants, Conditions, & Restrictions (CCR's) there should not be any buildings on the property until the house is completed and a contract with a qualified contractor. There is no electricity other than a generator, the sound bounces off their house and causes quite a bit of noise. There has been an RV on the property for quite a while then on December 12 they moved in a second RV trailer. At one time there were several people living on the property and they would dump their waste into a hole in the ground. They also had a washing machine on the property and the water would run onto her property. Ms. McFarland said they had to install a fence on her property so the visitors would quit driving through their property to access the Rentfro property. She has also been trying to sell their property since November 2015, and with the condition of the neighboring property they had to drop the price multiple times. She is asking for denial of the temporary use permit.

Member Loper asked how long they lived on their property. Ms. McFarland said since 2012. Member Loper asked if they have septic or a well. Ms. McFarland said they have a well and septic. Member Loper noted the County does not enforce CC&R's and asked legal counsel how are CC&R's enforced if there is not an HOA. Mr. Swan said it cannot be enforced if there is no enforcement mechanism.

Member Loper asked about drainage flows. Mr. Gerard said the flows need to enter and exit in the same fashion. They need grading permits for any type of dirt work or construction and it is all part of the review. They do have permitted structures for the keeping of horses and there are certain accessory uses that go along with that like vehicles and equipment associated with the horses. There is also caretakers for the normal care of animals and the abnormal care of animals. What they are requesting today is a manager to reside on the property to take care of the animals and watch the property while construction is going on. A TUP can have conditions placed on it subject to timing and an absolute deadline, the permit needs to remain valid. Member Loper asked if there is electricity on the property. Ms. McFarland said no, and noted the drainage wasn't an issue before, but now with the horses and construction it floods considerably.

Ms. Loomis asked if there was anything presented that will have any bearing on the Temporary Use Permit. Member Loper said the drainage and the lack of septic, usually the septic is the first thing to be installed. He also asked if the TUP is for one RV or two. Mr. Gerard said an RV on a parcel for the keeping of horses is non-accessory. Once the primary use is established with the completed permit for a single family residence they can store RV's but occupied RV's are not permitted, except in these unusual circumstances with a TUP to occupy one RV. Member Loper noted there were two or three RV's on the property. Ms. Loomis said none of them are being used for occupancy, and one is being used as a construction trailer. She also noted they had previous complaints regarding the drainage, but when the property was inspected she was told the McFarland's lowered their land and that is why they are experiencing excessive water. As far as the septic it will be for the primary residence and never intended for temporary use. They received the construction permit in October and the septic permit was approved prior but they wanted to hold off installing the septic until they knew for sure where the house was going to be. According to the TUP stipulations they are not to use the septic, they must self-contain and haul off even if the septic were operable. Member Loper noted he was not aware of that stipulation. Mr. Gerard said it was a stipulation from environmental services.

Vice Chairman Harris asked if there was anything that Ms. McFarland stated that would concern staff since they recommended approval. Mr. Smith said the generator, other than that the ordinance speaks to being allowable with the open permit and the limitation is two years for the permit of the residence.

Mr. Gerard said someone living on a site and running a generator is disharmonious to a residential environment. When building a single family residence there needs to be electric running to the site. Ms. Loomis said the generator is primarily used to run the well to water the horses. They have an application with Arizona Public Service (APS) and they are currently coming up with a design to run electric to the main residence.

Vice Chairman Harris asked if they hired an actual contractor to handle the septic. Ms. Loomis said they are working on this project as an owner design build so they are the general contractor and will be hiring licensed subcontractors to do the work.

Member Loper asked staff if TUP's are granted for lesser periods and if there is a reporting mechanism to know things will be progressing. Vice Chairman Harris noted the statutes are the statutes and the codes are the codes and they do not know everyone's personal situation, but agrees to possibly set some timelines.

Member Cardon asked when do building permits expire. Mr. Gerard said building permits are valid for a one year period. They usually keep them open as they pass inspections so it is possible for a building permit to stay open for a very long time. With a TUP the maximum is 2 years and can also be for shorter periods of time, it all depends on the situation. It is tough to do a status report they would have to be very specific because it is quite different from a zoning case.

Member Cardon said it is disappointing to have an adverse relationship with neighbors. Maybe add a condition to the TUP about the generator and require that electricity be installed before the RV is occupied.

Vice Chairman Harris noted he does not want to overstep any bounds, these are not small issues and he understands the frustration about the generator and the property value going down. He hopes they could come together to help them get things done.

Member Loper asked Ms. Loomis if there is an anticipated schedule for the installation of septic and electric, and completion of the dwelling. Ms. Loomis said they already started the construction, the stem wall is in, the plumbing is being installed and they are moving as fast as they can and have all the permits in place. Member Loper asked if there was a stipulation where you couldn't use a generator and have the electricity installed. Ms. Loomis said it would not alleviate the generator noise since they will need it for the construction. Member Loper asked if they could move the generator or some type of frame work around it to muffle the sound especially during non-daylight hours.

Mr. Gerard said there is an hours of construction ordinance and there cannot be nighttime hours of construction. If there is it could be a violation and could be reported. Ms. Loomis said these issues could be handled in a better way and not by the Board of Adjustment. Vice Chairman Harris stated he agrees, but we have to have order in life and that's why they exist to help take care of these things. Maybe it is best to get together with your neighbors to have a discussion about the generator issue. Ms. Loomis noted this is the first time they heard there was an issue with the generator, but they do have a solar panel available for the RV.

Member Loper said he would like to continue this until next month, so a schedule can be provided to look at the validity of the existing violations, how to best mitigate sound from the generator, and if there is an opportunity for them to work together.

Member Cardon said he is leaning towards approval of the TUP. Vice Chairman Harris agrees and does not want to get into landlord issues.

Member Loper motioned to continue for 30 days. Member Cardon and Vice Chairman Harris voted against this motion. Member Cardon entered a second motion to approve.

BOARD ACTION: Member Cardon approved TU2016036 with conditions 'a'-'g'. Vice Chairman Harris second. Approved 2-1.

- a. Development of the site shall comply with the entitled site plan, "Margaret Rentfro New Residence", stamped received November 28, 2016, consisting of one (1) 11" x 17" pages, except as modified by any condition identified herein.
- b. Use of the site shall be in conformance with the Narrative Report unentitled, consisting of one (1) page, stamped received November 16, 2016, except as modified by any condition identified herein.
- c. This Temporary Use Permit is authorized for a two year period and shall expire on January 12, 2019. The Temporary Use Permit approval letter must be visibly displayed at the front of the property at all times. Failure to meet this display requirement shall result in revocation of the Temporary Use Permit if a Zoning Citation is issued.
- d. The property owner/s and their successors waive claim for diminution in value if the County takes action to rescind approval due to noncompliance with any condition.

- e. Potable water for the trailer must be obtained from an appropriate water source.
- f. Wastewater must be self-contained in the trailer and hauled to an appropriate waste facility as needed.
- g. The temporary use permit is contingent upon and only valid if the construction permit B201504988 remains active and valid for the single family residence.

Adjournment:

Vice Chairman Harris adjourned the meeting of January 12, 2017 at 1:32 p.m.

Prepared by Rosalie Pinney
Recording Secretary / Administrative Assistant
January 12, 2017